IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

RFA.No. 348 of 2003(E)

OS.68/2001 of ADL.SUB COURT, THALASSERY
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APPELLANTS/DEFENDANTS
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1. VISWANIKETHAN COMMUNITY DEVELOPMENT CENTRE, CHALAKKARA, MAHE, REPRESENTED BY ITS DIRECTOR CUM CHAIRMAN.

2. P.RADHAKRISHNAN NAIR S/O. PANKAJAKSHAN NAIR, AGED ABOUT 55 YEARS, DIRECTOR CUM CHAIRMAN, RESIDING AT 'RADHA VALSAM', CHALAKKARA DESOM, MAHE COMMUNE

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS: PLAINTIFF

THE WESTERN INDIA COTTONS LTD., PAPPINISSERI, KANNUR REPRESENTED BY ITS SECRETARY, R.BALAKRISHNAN, S/O. RAMAN NAIR, AGED 48 YEARS, RESIDING AT KANNUR, KANNUR DISTRICT.

BY ADV. SRI.U.K.RAMAKRISHNAN
SMT.P.VIJAYAMMA
SMT.AMRITA JAYARAM

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON 7-2-2007 DELIVERED THE FOLLOWING:

ORDER ON I.A.NO. 2359/2003 IN RFA NO. 348/2003

DISMISSED.

7-2-2007 **SD/-K.A.ABDUL GAFOOR,JUDGE**

SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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R.F.A.NO. 348 OF 2003

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DATED THIS THE 7TH DAY OF FEBRUARY 2007

JUDGMENT

Udayabhanu,J.

The appellants are the Society and its Director-cum-Chairman against whom the court below has decreed the money suit for a sum of Rs.5,65,963/- with interest at 12% per annum on the principal sum of R.4,26,746/- from the date of suit till the date of decree and thereafter at 6% till realisation.

2. The plaintiff, a company registered under the Companies Act has sought for the realisation of the above amount alleging that the same is due to it from the appellants/defendants towards purchase of textiles on credit terms on the basis of invoices and evidenced by post dated cheques. It is the case of the plaintiff company that it w as the practice to supply materials on the basis of invoices and payments are made by way of issuance of cheques, post dated, inclusive of interest for the

credit period. Most of the cheques issued were subsequently dishonoured and the plaintiff has instituted criminal proceedings under Section 138 of the Negotiable Instruments Act. Several notices were sent demanding payment. There were no proper reply or explanation. Along with the suit, the plaintiff has filed the extract of the accounts that would show the details of the amounts due.

3. The defendants had, in the written statement filed, admitted business dealings and transactions with the plaintiff during the period 1997 to 98. It is contended that on an average of 15 bales of textiles were purchased per month and payments were made in cash as well as cheques. It is denied that post dated cheques used to be issued. According to the defendants, at the time when the plaintiff stopped supply, the amount due was Rs.1,32,932/- and out of these a sum of Rs.66,575/- has been paid, i.e.Rs.50,000/- by cash on 11-5-1998 and Rs.15,575/- on 13-5-1998. According to the defendants, notices have been properly replied to and that they have requested the plaintiff to settle the accounts and return the cheques for which payments were made. It is stated that in certain cases cheques were

meant only as security. According to the defendants, the plaintiff without returning the cheques for which cash was paid, presented the cheques to the Bank and in consequence initiated the criminal proceedings. According to the defendants, the plaintiff ought to have filed a suit for accounts instead of suit for recovery of money based on accounts which according to the defendants, is not maintainable.

4. The court below has found on the basis of evidence adduced in the matter that consisted of the testimony of PW1 and DW1 and Exts.A1to A19 and Exts.B1 to B9 that the case set up by the appellants/defendants is not consistant whereas the plaintiff has produced the entire documents maintained by them in support of the case set up. Hence, it was found that the evidence adduced at the instance of the plaintiff are sufficient to substantiate the case with respect to the amounts due. On the other hand the version of the defendants was inconsistent and self contradictory and also that the defendants could not bring out any incongruity or misstatement or incorrect entries in the books of account or other documents produced. Despite the fact that the plaintiff has produced along with the plaint the true copy

of the accounts maintained by the company for the period from 1-4-1998 to 31-3-1999 the written statement filed by the defendants is silent as to the alleged falsity in the accounts maintained by the plaintiff except a general statement.

5. On a perusal of the evidence adduced in the matter, it appears to us that the findings of the court below cannot be found fault with. We find that the evidence of PW1, the Finance Manager of the plaintiff company who has testified in detail as to the transactions, as to the amounts due, as to the genuineness of the documents maintained, as to the supply i.e. the invoices, the entries in the day book and the details in the ledger stands not impeached in the cross examination. On a scrutiny of the testimony of PW1, it can be seen that he has proved the above documents that consisted of Ext.A4 series of 85 invoices and Exts.A5 and A6 invoices issued in the name of the defendant society for supply of textiles and Exts.A7 to A10 day books with respect to the above period wherein the details of the invoices are mentioned and Exts.A11 to A15, the ledgers wherein also the details are entered. Exts.A16 is the certified ledger extract that contained the entire details. The cheques issued could not be

produced as the same was filed in the Judicial First Class Magistrate Court-I, Kannur with respect to the proceedings under Section 138 of the Act. Exts.A18 and A19 are the printed audited balance sheet of the above period. He has stated that the amounts claimed by the defendants as having paid towards the amount due has been credited. On the other hand, we find that the cross examination of PW1 is in the nature of an attempt to fish out some possible inaccuracies and improprieties in the issuance of invoices and keeping of account rather than on the basis of any specific ground that any particular entry is incorrect or any particular supply noted was not so really made and also to stress the fact that the cheques issued have not been produced and that the criminal proceedings initiated have been dismissed. On a perusal of the cross examination of PW1, it would appear that the defendants have no specific case as such as to any entry in the day books or ledgers or as to any invoice as false. DW1, the Chairman-cum-Director of the defendant when cross examined, has stated that he is not liable to pay the amounts mentioned in the cheques. He has also stated that there are no documents that would show that the amounts have

been paid. He has also admitted that the defendants are keeping accounts of purchases and the above documents would show the details of purchases, but the defendants have not produced the above documents and there was no explanation for the non-production of the same. He has admitted that there used to be credit transactions and post dated cheques used to be issued also which is contrary to his version in the written statement. Certified copy of 21 cheques were shown to DW1. But he replied that he cannot state anything about the same unless the original is shown to him.

6. It was submitted by the counsel for the respondent/plaintiff that Section 138 cases filed were dismissed by the trial court only on technical grounds and that the plaintiff had filed appeals over the same. He has also produced before the single judge of this Court the order in appeals over in C.C.Nos. 422/98,423/98, 454/98, 471/98, 494/98, 495/98, 504/98, 540/98 and C.C.No.541/98. The criminal cases have been dismissed by the Judicial First Class Magistrate Court on the ground that the person who filed the complaint was found to be not properly empowered and the appellate court setting aside

the finding remanded the matter for fresh consideration overruling the preliminary objection that was upheld by the J.F.C.M. The appellants/defendants have not produced the relevant records maintained in their office.

7. Counsel for the appellants has relied on the decision of the Supreme Court in **Chandradhar v. Gauhati Bank, AIR 1967 SC 1058** that a person cannot be charged with liability only on the basis of entries in the books of accounts vide Section 34 of the Evidence Act. We find that the above observation was made by the court on the basis of the evidence adduced in the particular case. Section 34 itself specifies that the entry in the books of account alone would not be sufficient to charge any person with liability. Counsel has also relied on the observation of the Supreme Court in **Central Bureau of Investigation v. V.C.Shukla, AIR 1998 S.C.1406** also to the same effect. The court has observed in the above case that since an element of self interest and partisanship of the entrant to make a person liable cannot be ruled out when the entries are made, the additional safeguard of insistence upon other independent evidence to fasten him such liability has been provided in

Section 34 itself. We find that the above case is with respect to a criminal prosecution and hence the ratio in the matter cannot be straight away applied in the present case. Counsel has also relied on the decision of this Court in **Narayanan v. Indian Handloom Traders, 1999(1)KLT 700.** In the above decision this court has noted that the books of account is only a piece of evidence which the court may take into consideration for determining the liability of the defendant. It is also noted therein that the person competent to speak as to the fact should prove the entries and that it should be proved that the accounts are regularly kept in the course of business. It is noted that the quantum of evidence required for corroboration would vary in each case. It is also reiterated that the entries in the books of accounts alone would not be sufficient to charge a person with liability. Counsel has also cited the decision of the Andhra Pradesh High Court in **Seetharamaiah v. Srirama Motor Finance Corpn., AIR 1977 A.P.164** and of the Gauhati High Court in **Dharam Chand Joshi v. Satya Narayan Bazaz, AIR 1993 GAUHATI 35** also to the same effect. We find that the above decisions are based on the particular fact situation

involved therein. In the instant case, we find that the Manager of the Company himself has testified as to the details of the transactions and as to the entries in the day book and ledger and invoices and as to the practice of issuance of cheques and as to amounts due. The attitude or stance of the defendants is just denial. The evidence adduced in the matter by the plaintiff company is not confined to the entries in the books of accounts. The evidence vide the entries in the books of accounts are corroborated by the particulars in the invoices, the evidence as to the issuance of cheques and the testimony of PW1, the finance manager who is the person fully personally aware of the details of the transactions. Hence, the contention that the evidence adduced consisted of only entries in the books of account is far from true. As already noted above, the particular entries in the account books have not been impeached in the cross examination. The details of the transaction produced along with the plaint has not been particularly or specifically disputed in the written statement filed. The defendants/appellants have not produced the records maintained at their office as to the details of the transactions. The amount said to have been paid,

i.e.Rs.66,575/- have been credited towards the dues by the plaintiff and the same was found to have been intimated to the defendants as well vide Ext.B4. As rightly noted by the court below, no single instance is pointed out as an incorrect entry in the books of account produced by the plaintiff. In the circumstances, we find that the decision of the court below is not liable to be disturbed.

In the result, the appeal is dismissed with costs.

Sd/-

K.A.ABDUL GAFOOR
JUDGE

Sd/-
K.R.UDAYABHANU,

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TRUE COPY

P.S.TO JUDGE

K.A. ABDUL AFOOR &
K.R.UDAYABHANU, JJ

R.F.A. NO. 348 OF 2003

JUDGMENT

DATE: